



August 25, 2008

Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

CREDIT UNION ASSOCIATION OF RHODE ISLAND
COMMENTS ON ADVANCED NOTICE OF PROPOSED RULEMAKING FOR PART 723

BY E-MAIL ONLY - regcomments@ncua.gov

Dear Secretary Rupp:

On behalf of the Credit Union Association of Rhode Island, the New Hampshire and the Massachusetts Credit Union Leagues ("Leagues"), please accept this letter of comment on the advanced notice of proposed rulemaking ("ANPR") by the National Credit Union Administration ("NCUA") relative to member business loans. The Leagues are the local state credit union trade associations collectively serving 260 federal and state chartered credit unions that are federally-insured and cooperatively owned by 4.1 million consumers as members in the states of Rhode Island, New Hampshire and Massachusetts, respectively, and operating as part of the Credit Union National Association ("CUNA").

The Leagues recognize and applaud the current efforts of the NCUA in releasing the ANPR that seeks to update, clarify and simplify existing regulations. It is our intent to offer suggestions to NCUA relative to certain aspects of its Member Business Loan ("MBL") rule found at Part 723 of its Rules and Regulations to strengthen the regulatory scheme for such loans so that credit unions may offer safe, sound and competitive products and services to business members. Specifically, the Leagues offer comments relative to fees assessed on member business loans and comments relative to the application of the member business loan rule to one-to-four family, owner-occupied properties. The Leagues appreciate the timely opportunity to comment on any issues relating to MBLs as indicated in the ANPR.

As a preliminary matter, the Leagues note that all MBL loans may only be offered to members as set forth in a credit union's bylaws. Art. II, s.1, Stnd. FCU Bylaws. The Leagues also note that prior to engaging in member business loan activities, a credit union must adopt detailed member business loan policies and procedures to be reviewed at least on an annual basis. Such policies and procedures should address, at a minimum, the types of products and services offered, field-of-membership requirements, underwriting, collateral, insurance and security requirements, individual loan and aggregate limitations, account/loan documentation, staff

expertise and experience, collection, recordkeeping and record retention requirements, and conflicts of interest provisions.

The Leagues recognize the complex interplay between state and federal authority in the area of business lending services offered by federally-insured credit unions. The Federal Credit Union Act ("Act") and state authorities expressly recognize the authority of credit unions to offer certain services to business members. Generally, these provisions define a credit union member business loan as any loan, line of credit or letter of credit where the borrower uses the proceeds for the following purposes: commercial, corporate or other business investment property or venture, or agricultural needs. Thus, business loans may be provided to both natural person members and business members as defined by the purpose of the loan. The MBL rule is applicable to all federally-insured credit unions, including state chartered, federally-insured credit unions. See 12 C.F.R. 723.4.

Finally, the Leagues note that MBLs have been offered by credit unions for over 80 years. The first state law governing the operation of credit unions, predating the Act, was established in 1909 by the Commonwealth of Massachusetts. The earliest member business loans were made by Massachusetts credit unions in 1924 for the acquisition of a variety store in Fall River and a cemetery in Dorchester.

A) Fees

Under the MBL rule, members may repay such loans, or outstanding balance on a line of credit, prior to maturity in whole or in part on any business day without penalty. 12 C.F.R. 701.21(6). The Leagues believe that this provision is intended to protect such members from excessive fees and undue hardship during the life of the loan.

The Leagues have witnessed, however, that the nature of MBLs are very distinct and price sensitive. In a business setting, it is commonplace for such members to refinance or to pay off prior to maturity exclusively upon attaining more advantageous rates or terms, however slight and however limited. This volatility can pose significant safety and soundness, risk management/asset liability concerns particularly in a declining rate environment. In addition, the cooperative nature of credit unions results in all members absorbing the costs of such early payment decisions by business members.

The Leagues also note the value of the deterrent impact and negotiation opportunities that the possible assessment of such fees may have on MBLs. The discretion to provide a remedy for such circumstances in loan contracts with business members is invaluable.

The Leagues also believe that the NCUA possesses the latitude to permit such fees based upon the legislative history of the Act, regulatory opinions and case law. A request for this determination has been previously submitted by CUNA to the NCUA and remains pending. The Leagues urge the NCUA to favorably consider this request. The Leagues advocate in support of a mechanism to permit credit unions to recoup the costs of underwriting and risk of MBLs through the assessment of fees in circumstances of early prepayments.

B) Definition of MBL

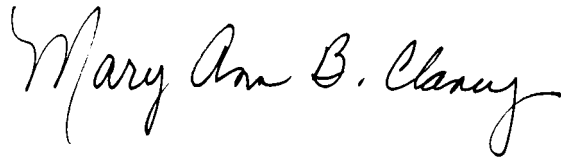
The Leagues acknowledge that it is the investment or business purpose rather than the residential characteristics of the real estate that governs its classification under the MBL rule. Thus, a non-owner occupied mortgage loan on a 1-4 family residential property maybe considered as a business/commercial real estate loan or a MBL, whether it is made to a natural person member or business member.

The most common example of such MBLs made by our member credit unions relates to multiple family housing opportunities in many of our inner city communities, such as Providence, Warwick, Cranston, and Pawtucket . Many members seek to obtain financing from their credit unions for non-owner occupied, family-owned properties for investment purposes.

The Leagues recognize the longstanding interpretation of the NCUA in classifying these loans as MBLs. NCUA Op. Ltr. 04-1130. However, the Leagues also recognize that other quasi-government agencies, such as Fannie Mae, charged with primary responsibilities in the mortgage arena, do not view such properties as business loans as a result of the differences in underwriting and risk. The Leagues encourage any consideration that the NCUA can provide to reclassify such loans similar to the classifications of other agencies, perhaps by distinguishing such loans based on underwriting criteria, from the MBL definition. The Leagues do not view these loans as commercial loans and believe that they warrant distinct regulatory treatment.

Thank you for your consideration of these views. Please do not hesitate to contact me if you or your staff have any questions or require additional information.

Sincerely,

A handwritten signature in black ink that reads "Mary Ann B. Clancy". The signature is written in a cursive, flowing style.

Mary Ann B. Clancy
Senior Vice President
and General Counsel